



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss

COMMISSION ADJUDICATORY
DOCKET NO. 06-0002

IN THE MATTER OF DOUGLAS C. DESCHENES

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Douglas C. Deschenes pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, § 4(j).

On July 26, 2005, the Commission initiated, pursuant to G.L. c. 268B, § 4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Deschenes. The Commission has concluded its inquiry and, on February 9, 2006, found reasonable cause to believe that Deschenes violated G.L. c. 268A.

The Commission and Deschenes now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. Douglas Deschenes is an attorney. From May 2002 until May 2005, Deschenes served as an appointed member of the Westford Affordable Housing Committee ("the AHC"). The AHC's purpose is to promote low and moderate income housing in Westford.
2. In Westford, anyone who wants to build an affordable housing project may present a concept plan for that development to the Board of Selectmen (BOS). If so presented to it, the BOS asks the developer to present the concept plan to the AHC. Although not required, the AHC occasionally makes advisory recommendations to the Zoning Board of Appeals (ZBA) about each plan. Finally, the plan goes through the ZBA hearing process, which approves or denies a permit for that project.
3. During his tenure on the AHC, Deschenes represented clients on 11 different plans before the AHC. Deschenes represented these clients by presenting their concept plans for affordable housing projects and by answering questions about those projects. Deschenes received \$3,862 from those clients for preparing and presenting these plans.
4. Deschenes did not participate as an AHC member in matters involving his clients.

Conclusions of Law

5. Section 17(a) of G.L. c. 268A prohibits a municipal employee, otherwise than as provided by law for the proper discharge of official duties, from directly or indirectly receiving or requesting compensation from anyone other than the municipality in relation to a particular matter¹ in which the municipality has a direct and substantial interest.
6. Section 17(c) of G.L. c. 268A prohibits a municipal employee, otherwise than in the proper discharge of official duties, from acting as attorney for anyone other than the municipality in relation to a particular matter in which the town has a direct and substantial interest.
7. As an AHC member, Deschenes was a municipal employee as that term is defined in G.L. c. 268A, § 1(g), and therefore subject to the conflict-of-interest law.
8. The AHC's decisions concerning recommendations on affordable housing projects that came before it were particular matters.
9. The town had a direct and substantial interest in these decisions because they could influence the ZBA permit decision.
10. By presenting his clients' affordable housing plans before the AHC, Deschenes acted as an attorney. Deschenes' actions in so appearing were in relation to the AHC's preliminary decisions concerning potential advisory recommendations to the ZBA on his clients' affordable housing projects. Deschenes' actions in presenting his clients' affordable housing plans before the AHC were not within the proper discharge of official duties as an AHC member.
11. The \$3,862 in compensation Deschenes received for preparing and presenting these plans to the AHC was in relation to the AHC's decisions regarding his clients' projects. Deschenes was not authorized by law to receive compensation in relation to these AHC particular matters.
12. Thus, Deschenes received compensation from and acted as attorney for a private party other than the town, in relation to the AHC's decisions concerning recommendations on his clients' affordable housing projects, particular matters in which the town had a direct and substantial interest. By so doing, Deschenes violated § 17(a) and (c).

Resolution

In view of the foregoing violation of G.L. c. 268A by Deschenes, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Deschenes:

- (1) that Deschenes pay to the Commission the sum of \$5,000.00 as a civil penalty for violating G.L. c. 268A, §17(a) and (c);
- (2) that Deschenes pay to the Commission the sum of \$3,862 as a civil forfeiture of the compensation that he received for work done in relation to matters involving the AHC; and

- (3) that he waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: February 22, 2006

¹ "Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).